

1 THE HONORABLE JOHN C. COUGHENOUR  
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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 FEDERAL TRADE COMMISSION,

11 Plaintiff,

12 v.

13 AMAZON.COM, INC.,

14 Defendant.

CASE NO. C14-1038-JCC

ORDER GRANTING PLAINTIFF'S  
MOTION FOR PROTECTIVE  
ORDER

15 This matter comes before the Court on the FTC's Motion for a Protective Order with  
16 respect to Amazon's 30(b)(6) deposition notice (Dkt. No. 49), Amazon's Response (Dkt. No.  
17 51), and the FTC's reply (Dkt. No. 54).

18 Upon considering the parties' briefing and the relevant record, the Court finds the burden  
19 of several "topics" identified in Amazon's 30(b)(6) notice to outweigh their likely benefit, and  
20 hereby GRANTS the motion for the reasons explained herein.

21 **I. BACKGROUND**

22 On August 17, 2015, Amazon served its Rule 30(b)(6) deposition notice on the FTC.  
23 (Dkt. No. 49 at 15–22.) In the notice, Amazon requested that the FTC prepare its personal  
24 representative to testify with respect to the several topics. The FTC seeks a protective order  
25 striking or limiting the following topics relating to Amazon's business competitor, Apple:

- 1 6. Studies, surveys, or analyses the FTC conducted, commissioned,  
2 considered, or otherwise made known to the FTC referring or related to  
3 In-App Charges, including but not limited to In-App Charges incurred on  
the following digital platforms operated by Amazon or Apple: (a) the  
Amazon “Appstore,” or (b) Apple’s App Store
- 4 15. The FTC’s investigation of and settlement with Apple regarding In-App  
5 Charges incurred during use of Apps downloaded from Apple, including  
6 the FTC’s position with respect to what is required by its consent decree  
7 with Apple to ensure that its practices for In-App Charges comply with  
Section 5 of the FTC Act.
- 8 17. The FTC’s understanding of the amounts and percentages of In-App  
9 Charges that were refunded by Apple to customers prior to their  
settlements with the FTC.
- 10 21. The various controls, protections, or notifications utilized by Apple from  
11 inception of In-App Purchasing to the present which were intended to  
12 avoid accidental purchases of In-App Charges (such as parental controls,  
password prompts, PINs, or other disabling tools or notifications to the  
customer that such a purchase had been transacted), including the date  
13 each such control or protection was implemented.
- 14 22. Apple’s customer-service policies and practices, including the various  
15 means and methods by which customers could seek and receive refunds  
16 from Apple for unauthorized or accidental In-App Charges, from inception  
of In-App Purchasing to the present.

15 (Dkt. No. 49 at 19–22.) The FTC moves for a protective order striking or limiting its  
16 testimony with respect to these topics as the information: (1) represents sensitive and  
17 confidential information submitted by Apple in response to a previous FTC investigation, (2)  
18 presents a burden on the FTC in preparing for its deposition, and (3) is irrelevant to the claims or  
19 defenses of the above-captioned matter. (Dkt. No. 49 at 2.)

## 20 **II. DISCUSSION**

21 Fed. R. Civ. P. (26)(b)(1) limits discovery to “any non-privileged matter that is relevant  
22 to any party’s claim or defense.” Information “reasonably calculated to lead to the discovery of  
23 admissible evidence” is discoverable. *Surfvivor Media, Inc. v. Survivors Prods.*, 406 F.3d 625,  
24 635 (9th Cir. 2005) (internal citation omitted). District courts are afforded broad discretion in  
25 26

1 determining what is relevant and discoverable. *Id.*

2 Where “the burden or expense of the proposed discovery outweighs its likely benefit,”  
3 the Court must limit discovery. Fed. R. Civ. P. 26(b)(2)(C). Moreover, the Court may issue a  
4 protective order for good cause to prevent “annoyance, embarrassment, oppression, or undue  
5 burden or expense.” Fed. R. Civ. P. 26(c). One of the considerations provided by the Federal  
6 Rules for issuing a protective order is where “confidential . . . commercial information” is  
7 implicated. Fed. R. Civ. P. 26(c)(1)(G).

8 Upon review, the Court finds that Amazon’s request that the FTC prepare testimony with  
9 respect to Apple’s practices implicates sensitive commercial information, and is unduly  
10 burdensome particularly considering its low probative nature. Despite Amazon’s arguments, the  
11 allegations pled in the FTC’s Complaint under 15 U.S.C. § 45(n) and 15 U.S.C. § 53(b) do not  
12 pertain heavily to industry practices. (*See* Dkt. No. 1 at 10–11; Dkt. No. 51 at 5.) The FTC’s  
13 allegations against Amazon are based on unfair practices due to “substantial injury” to  
14 consumers. (Dkt. No. 1 at 11.) To the extent that information regarding Apple’s In-App Purchase  
15 practices is relevant and discoverable, a value the Court weighs lightly, the burden to the FTC<sup>1</sup>  
16 outweighs the benefit of preparing testimony on these confidential topics. The Court finds good  
17 cause for entry of a protective order regarding Amazon’s Rule 30(b)(6) notice.

18 **III. CONCLUSION**

19 For the foregoing reasons, the FTC’s motion for a protective order (Dkt. No. 49) is  
20 GRANTED. Accordingly,

21 1. Topics 17, 21, and 22 are stricken from the notice;  
22 2. For Topics 6, 15 and any other topic that may encompass the FTC’s investigation  
23 of Apple, the topics are limited to exclude inquiry into any non-public  
24 information related to the FTC’s investigation of Apple, including non-public  
information obtained from Apple in the course of that investigation; and

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26 <sup>1</sup> In assessing the burden to the FTC, the Court is also mindful of the FTC’s reliance on cooperation from the  
companies it investigates as part of its “pro-competition and consumer protections missions.” (Dkt. No. 49 at 8.)

1       3. For any topic that may encompass the FTC's investigation of any other company  
2       besides Amazon, the topics are limited to exclude inquiry into any non-public  
3       information related to the FTC's investigation of that company, including non-  
4       public information obtained from that company in the course of that investigation.

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7       DATED this 16 day of October 2015.  
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11       John C. Coughenour  
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John C. Coughenour  
UNITED STATES DISTRICT JUDGE